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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1991

Addendum

[2 November 1994]


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## Introduction

1. By Decree No. 52-89 of the Congress of the Republic, dated 12 October 1989, the State of Guatemala approved the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was published in the Diario de Centroamérica on 6 June 1990. The instrument of accession is dated 23 November 1989 and came into force for Guatemala in February 1990.

2. It is necessary to point out that the State of Guatemala has failed to keep up to date with the preparation and submission of periodic reports as required by the Manual on Human Rights Reporting, no report having been submitted for the year 1992. Accordingly, Guatemala is now submitting the first periodic report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is in two parts. The first part contains information of a general nature and the second information in relation to each of the articles in Part I of the Convention.

3. In the course of the report, reference is made to those items of domestic legislation that are related to or consistent with the provisions of the Convention, together with examples of actual cases tried by Guatemalan courts. The legislation on extradition also deserves to be mentioned, and an account is given of cases that have been heard in the State of Guatemala and those that are currently being dealt with by foreign courts, whether at Guatemala's request or because persons are being summoned to appear before the courts in foreign countries with which Guatemala has extradition treaties. It should likewise be noted that the report mentions the physical infrastructure, human resources and legislation that the State of Guatemala has at its disposal for the essential purpose of ensuring observance of and respect for the human rights of individuals, whether they are at liberty or held in places of imprisonment, any cruel treatment that might constitute torture being specifically prohibited.

4. Lastly, the State of Guatemala, in compliance with its commitments at both the international and the national level, is taking action in every sphere of government and society to ensure that human rights are respected and observed and to combat any possible manifestations of cruel, inhuman or degrading treatment or punishment. This is fully covered by the country's domestic legislation, severe penalties being laid down for anyone responsible for committing such unlawful acts.

## I. INFORMATION OF A GENERAL NATURE

5. The Political Constitution of the Republic of Guatemala recognizes the principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law. The provisions of the Convention constitute part of Guatemala's internal law, since the established procedures laid down in Guatemalan legislation for the approval and application of this international legal instrument have been followed.

6. The Convention was adopted by Decree No. 52-89 of the Congress of the Republic, dated 8 December 1989. Persons who consider their rights to have been violated can accordingly invoke its provisions, given that this international legal instrument is part of Guatemala's domestic law.

7. Constitutionally, Guatemala is a free, independent and sovereign State so organized as to guarantee that its inhabitants can exercise their rights and freedoms. Its system of government is republican, democratic and representative. Sovereignty is vested in the people, who delegate its exercise to the legislature, the executive and the judiciary. Any subordination of these powers one to another is forbidden.

8. Justice is administered in accordance with the Constitution and the laws of the Republic. The courts of law have the power to pass judgement and ensure that their judgements are executed. The other organs of the State must give the courts the assistance they require for the execution of their decisions. The judicial function is exercised as an absolute prerogative by the Supreme Court of Justice and the other courts established by law. No other authority may intervene in the administration of justice.

## A. General legal framework

9. Constitutionally, in the State of Guatemala no one can be subjected to any condition that impairs his dignity (Constitution, art. 4). In addition, the Congress of the Republic is responsible for establishing the necessary legal framework to prohibit and eliminate any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on any person in order to obtain information or a confession from him or from a third party.

10. Prisoners are treated as human beings, and the country's domestic legislation therefore expressly prohibits any discrimination, cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with a person's physical condition, treatment of a degrading nature or subjection to scientific experiments.

## B. International instruments and national legislation

11. The State of Guatemala is party to the Inter-American Convention to Prevent and Punish Torture, which was adopted by the Congress of the Republic through Decree No. 64-86, dated 11 November 1986, and ratified on 10 December 1986. It is an international legal instrument that forms part of domestic law and, since it regulates human rights matters, takes precedence over domestic law.

12. Similarly, in the Guatemalan State's domestic penal code and its code of penal procedure, cruel or degrading treatment is specifically prohibited (Decrees 17-73 and 51-92 of the Congress of the Republic respectively). It is also important to mention Congressional Decrees 40-94 and 512, which refer to the Organization Act for the Government Procurator's Office and the Procurator-General of the Nation in this connection respectively).

13. The Amparo, Habeas Corpus and Constitutionality Act states in article 8 that amparo protects persons from threats of violations of their rights and restores the exercise of those rights if they have been violated. There are no circumstances in which amparo is not applicable, and it will be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law. Finally, one of the functions of the Congress of the Republic is to pass laws providing for the protection of the individual, the supreme aim being the achievement of the common good.

### C. Invocation of the provisions of the Convention

14. According to article 46 of the Constitution, treaties and conventions accepted and ratified by Guatemala, in matters of human rights, take precedence over internal law. Consequently, the provisions of the Convention can be invoked before the courts, other tribunals or administrative authorities and can be applied directly, subject to prior approval by the Congress of the Republic and the Executive Branch, through the appropriate decree or order, making them part of Guatemala's domestic law (Political Constitution of the Republic of Guatemala, arts. 46, 171 and 183).

### D. Judicial, administrative or other competent authorities having jurisdiction

15. In the State of Guatemala, all institutions making up the three branches of power (executive, legislature and judiciary) are under an obligation to observe human rights and to ensure that they are observed and respected (Political Constitution of the Republic of Guatemala, arts. 46, 141, 152-155, 165, 171, 183, 203-205).

16. As for providing information on cases actually dealt with by the authorities during the reporting period, the fact is that there have been no cases of torture or cruel, inhuman or degrading treatment or punishment of people in Guatemala.

### E. Remedies and rehabilitation programmes

17. In an actual instance, the alleged victim - whether an individual or a legal person - may seek advice from members of the legal profession or from the Office of the Procurator-General and lodge a complaint with the appropriate authority (see general report) to obtain redress, on the basis of the relevant domestic administrative and legal remedies; he may, moreover, invoke in support of the complaint the international legal human rights instruments which, in conformity with the Constitution, are part of Guatemala's domestic legislation (Constitution, arts. 28, 29, 30, 46 and Amparo, Habeas Corpus and Constitutionality Act, arts. 1-8, 10, 19-21 and 27).

### F. Practical implementation of the Convention

18. The provisions of the Convention have not been implemented in practice in Guatemala and consequently no difficulty has arisen in that respect.

19. However, steps have been taken to ensure that the rights covered by the Convention are respected, complied with and protected, and the post of Procurator for Human Rights has been established, together with a Presidential Coordinating Committee for Government Human Rights Policy, responsible for cultivating respect for and compliance with those rights, in conformity with Congressional Decrees 54-87 and 32-87 and Government Orders Nos. 486-91, 549-91 and 404-92 respectively.

20. In addition, the Comprehensive Agreement on Human Rights, signed on 29 March 1994 in Mexico City by the Government of Guatemala and the Guatemalan National Revolutionary United Front (URNG), is designed to regulate compliance with and respect for those rights.

## II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

### Article 1

21. Paragraph 1 of this article provides a definition of torture. However, the terms cruel, inhuman or degrading treatment or punishment have not been defined by the United Nations General Assembly, although they are to be understood as providing the broadest possible protection against any form of physical or mental abuse.

22 Torture or cruel or degrading treatment is not employed in Guatemala to obtain information or an extrajudicial confession concerning the commission of a crime, since by law such confessions do not constitute evidence, and if a confession were thus obtained the official or public servant responsible would be liable to legal sanction (Constitution, art. 9 and Penal Code, art. 425).

23. Under articles 1, 2 and 3 of the Constitution, the Guatemalan State is structured so as to protect the individual and the family; its supreme aim is the achievement of the common good. In addition, it is the duty of the State to guarantee for the inhabitants of the Republic life, liberty, justice, security, peace and the full development of the individual. Human life and the integrity and security of the person are protected from the moment of conception.

24. Article 19 of the Constitution stipulates that the prison system must seek the social rehabilitation and reformation of prisoners, for which purpose prisoners are to be treated as human beings; they must not be discriminated against on any grounds, nor may they be subjected to cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with their physical condition or treatment of a degrading nature, nor may they be made victims of extortion or subjected to scientific experiments.

### Article 2

25. With regard to the first paragraph of this article, which concerns the adoption of legislation and other measures, it is necessary to bear in mind

related provisions such as the following: article 2, paragraph 2 of the International Covenant on Civil and Political Rights; article 2, paragraphs 1 and 3 of the International Covenant on Economic, Social and Cultural Rights; article 2, paragraph 2 and the relevant clause of article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination; article IV, paragraph (a) of the International Convention on the Suppression and Punishment of the Crime of Apartheid and article 3 of the Convention on the Elimination of all Forms of Discrimination against Women.

26. In this connection, article 138 of the Constitution makes it the duty of the State and the authorities to maintain the inhabitants of Guatemala in the full enjoyment of their constitutionally guaranteed rights.

27. Where article 2, paragraph 3 of the Convention is concerned, article 156 of the Constitution stipulates that no public, civilian or military official or employee shall be obligated to carry out orders that are manifestly illegal or that involve the commission of an offence.

28. Furthermore, article 425 of the Penal Code stipulates that any public official or employee who orders the use of undue duress, torture, degrading punishment, humiliation or any measures not authorized by law against a prisoner or detainee shall be sentenced to from two to five years' prison and general disqualification from office. The same sentence shall apply to those who carry out such orders.

29. In Guatemala, anyone who is illegally detained, imprisoned, or prevented in any other manner from enjoying his individual freedom, threatened with the loss of that freedom, or suffering harassment, even if he is imprisoned or detained in accordance with the law, has the right to apply for a writ of habeas corpus from the tribunals of justice, to secure the restoration or safeguarding of his freedom or the cessation of the harassment or the termination of the coercion to which he has been subjected (Amparo, Habeas Corpus and Constitutionality Act, art. 82).

30. Accordingly, in Guatemala any laws or governmental or other provisions that violate or undermine constitutionally guaranteed rights are null and void ab initio. Thus, no law may contravene the provisions of the Constitution (Amparo, Habeas Corpus and Constitutionality Act, art. 115).

31. Article 2 of the United Nations Code of Conduct for Law Enforcement Officials stipulates that "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons". Furthermore, article 5 of the same instrument stipulates that "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment". It is important to note that articles 2 and 5 of the Code of Conduct apply to article 2, paragraph 2 of the Convention.

32. Point 1 of the Comprehensive Agreement on Human Rights, signed on 29 March 1994 in Mexico City by the Unidad Revolucionaria Nacional Guatemalteca and the Government of Guatemala gives a general undertaking on human rights, paragraph 1.1 of which states:

> "The Government of the Republic of Guatemala reaffirms its adherence to the principles and rules guaranteeing and protecting the full observance of human rights, and its political intention to have them respected."

33. Paragraph 1.2 of the same instrument states that the Government of Guatemala will continue to promote all measures designed to further and improve the provisions and mechanisms for the protection of human rights.

## Article 3

34. With reference to article 3, paragraphs 1 and 2, of the Convention, Guatemala ensures that human rights are respected and acts, where appropriate, in accordance with these provisions.

## Article 4

35. With reference to article 4, paragraphs 1 and 2, of the Convention, all acts of torture and attempted torture are offences in Guatemala. The law also prohibits the commission of such acts against persons by public officials or employees.

36. The Political Constitution of the Republic and the Penal Code protect individuals from all acts of torture. Furthermore, under the Penal Code, any public employee or official committing any such act is liable to imprisonment (Constitution, arts. 1-4 and 19; Penal Code, art. 425).

37. The Penal Code, title II, articles 11 to 15, deals with such offences, whether, constituting wilful and culpable actual wrongs or attempts or impossible attempts to commit them. These provisions are consistent with article 4 of the Convention. Furthermore, under Guatemala's internal legislation, both the perpetrators of and accomplices in such offences are criminally liable therefor.

38. However, it is unusual for torture and other cruel, inhuman or degrading treatment or punishment to be encountered in the territory of Guatemala. If they do occur, the appropriate authorities, acting under the powers conferred upon them, conduct the necessary investigations for the purpose of ascertaining the facts and punishing the offenders, if any, in accordance with the law.

39. For the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment in penal detention centres, the Head of State issued Government Order No. 975-84 (Regulations for Detention Centres of the Republic of Guatemala) of 14 November 1984, articles 45 and 46 of which prohibit any punishment that constitutes degrading treatment, as well as the unnecessary use of violence against inmates. It also prohibits the use against inmates of more force than is necessary to deal with disobedience or

resistance to a lawful order. Prison guards who resort to force must endeavour to use it only as strictly and reasonably necessary and must immediately inform the director of the establishment of its use.

Article 5

40. With reference to the three paragraphs of this article, which provides that each State party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 of the Convention, Guatemala's Code of Penal Procedure provides, in title II, chapter I, section 1, article 37, for the establishment of the Ordinary Jurisdiction, which has jurisdiction over major and minor offences, subject to the exceptions provided for by law. The courts have a public right of action and they alone may hear and decide criminal cases and enforce the corresponding judgements.

41. This criminal jurisdiction extends to criminal offences committed in the Republic and to those producing their effects therein, except as provided by other laws and by international treaties. Consequently, this criminal jurisdiction may not be renounced (Code of Penal Procedure, arts. 38 and 39).

42. From another standpoint, the criminal jurisdiction of the courts may not be avoided and, pursuant to the above-mentioned Code, may not be extended (art. 40). Therefore, the territorial jurisdiction of a court may not be challenged or modified by own motion once the hearings have commenced, save in those cases which are regulated by a provision of the Constitution which divides jurisdiction among several courts. Consequently, in giving judgement, a court with competence to hear cases involving more serious offences may not declare itself incompetent on the ground that the case should be heard by a court with competence to hear cases involving less serious offences (Code of Penal Procedure, art. 40).

43. Accordingly, under article 43 of the Code of Penal Procedure, the following are competent to hear criminal cases:

Magistrates' courts;

Officials of the Government Procurator's Office responsible for examination proceedings;

Courts of first instance in charge of examination proceedings;

Trial courts;

Divisions of the Court of Appeal;

The Supreme Court; and

Courts of enforcement.

44. Article 16 of the Code of Penal Procedure provides that courts and other authorities responsible for trials must fulfil the obligations imposed on them by international treaties in the matter of respect for human rights.

45. With regard to the territorial scope of the criminal law, the Penal Code, Congressional Decree No. 17-73, provides in article 4 that, subject to the provisions of international treaties, the Code applies to anyone committing a crime or misdemeanour within the territory of Guatemala or in places or means of transport subject to its jurisdiction.

46. The question of the extraterritorial application of the criminal law is dealt with in article 5 of the Code. It provides that the criminal law shall apply in the case of:

(a) Any offence committed abroad by an official in the service of the Republic of Guatemala, if the offender has not been tried in the country where the offence was committed;

(b) Any offence committed on board a Guatemalan ship, aircraft or other means of transport, if the offender has not been tried in the country where the offence was committed;

(c) Any offence committed abroad by a Guatemalan, if extradition of the offender has been refused;

(d) Any offence committed abroad against a Guatemalan, if the offender has not been tried in the country where the offence was committed, provided a charge has been brought by or on behalf of the Government Procurator's Office and the person accused is in Guatemala;

(e) Any offence which, by virtue of a treaty or convention, is punishable in Guatemala, even if the offence was not committed in Guatemalan territory;

(f) Any offence committed abroad against the security of the State, its constitutional order or its territorial integrity, as well as the forging of the signature of the President of the Republic and the forging of coins or banknotes which are legal tender, bonds and other securities and credit documents.

47. With regard to jurisdiction over the offences referred to in article 4 of the Convention, attention is drawn in particular to Supreme Court Order No. 8-94, article 10 of which establishes jurisdiction over offences committed outside Guatemala. In the cases of extraterritorial application of the criminal law referred to in article 5 of the Penal Code, the territorial jurisdiction of the courts of first instance is governed by the following rules:

(a) In the case of an offence committed wholly abroad, the competent court shall be, by order of exclusion, that of the place of domicile or residence of the accused; that of the place of arrest of the accused; and that of the place where the offence was first reported or where the first action in the proceedings was taken;

(b) Where the offence was committed on board a ship or aircraft, the court having jurisdiction shall be that of the first port or airport of arrival in the territory of Guatemala.

48. It is also necessary to mention Supreme Court Order No. 9-94, which, in article 11, deals with the question of jurisdiction over offences committed outside Guatemala. It provides that, in the cases of extraterritorial application of the criminal law referred to in article 5 of the Penal Code, the territorial jurisdiction of trial courts over offences which are the subject of private action shall be governed by the rules laid down in the Order relating to Criminal Courts of First Instance. It is provided that in the case of publicly actionable offences the ordinary rules shall apply.

49. The Government Procurator's Office Organization Act, Congressional Decree No. 40-94, provides in article 1 that this Office shall function independently, shall conduct the prosecution in the case of criminal offences, and shall direct the investigation of publicly actionable offences. It shall also have responsibility for ensuring strict compliance with the laws of Guatemala. In the performance of this function, the Government Procurator's Office shall seek to ensure that justice is done and shall act with objectiveness and impartiality, observing the principle of legality, as provided by law.

50. The functions of this State body include investigating publicly actionable offences and providing for criminal prosecution before the courts, under the powers conferred by the Constitution, the laws of Guatemala and international treaties and conventions (Government Procurator's Office Organization Act, art. 2).

51. With regard to extradition, which is referred to in the penultimate paragraph of article 5 of the Convention, the Guatemalan Penal Code provides that extradition may be sought or granted in respect of ordinary offences. Extradition as provided for in international treaties may be granted only where there is reciprocity. In no case may extradition be sought or granted in respect of political offences or related ordinary offences.

## Article 6

52. In keeping with article 6, paragraph 1 of the Convention, the Code of Penal Procedure stipulates that if there are not sufficient grounds to issue a detention order, the court shall dismiss the case for lack of evidence without applying any coercive measures, unless absolutely indispensable to prevent escape or obstruction of the inquiry, in which case it may only apply one of the prescribed alternatives to preventive detention. Similarly, article 273 of the said Code stipulates that an order may be issued for the remand in custody of the accused to a public institution subject to the following prerequisites:

(a) Sufficient evidence reasonably to suggest that the accused has most probably committed an unlawful act or participated in such an act;

(b) Confirmation by two experts that the accused suffers from a serious mental disorder or disability and presents a danger;

(c) Danger of escape.

53. A sentence (decision) which imposes a coercive measure or rejects such measure may be reversed or corrected by the court, even of its own motion (art. 276 of the Code of Penal Procedure).

54. With respect to article 6, paragraphs 2, 3 and 4 of the Convention, it should be noted that section I, article 1 of the Code of Penal Procedure establishes the principle of legality, stipulating that no one shall be punished for acts that are not expressly qualified by the law as crimes or misdemeanours prior to their perpetration, nor shall any punishments be imposed other than those previously provided for by the law.

55. Similarly, chapter I (Procedural guarantees), section I, article 1 of the Code of Penal Procedure stipulates that there shall be no punishment without law (nullum poena sine lege). No punishment can be imposed that is not previously provided for by the law. Moreover, article 2 of the Code stipulates that there shall be no trial without law (nullum proceso sine lege). In other words, legal proceedings may be instituted and complaints and charges received only in respect of acts or omissions qualified as crimes or misdemeanours under a previously existing law. If this condition is not met, any proceedings initiated will be considered null and void and the court will be held responsible. In the same context, article 6 of the Code stipulates that only after a punishable act has been committed may proceedings in respect of such act be initiated.

56. Article 12 of the Constitution of the Republic of Guatemala stipulates that the defence of one's person and one's rights is inviolable. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal. No one may be tried by special or secret tribunals or by procedures not lawfully established in advance.

## Article 7

57. With respect to article 7, paragraph 1 of the Convention, there have been no cases in Guatemala corresponding to the offences referred to in article 4 of the Convention and meeting the conditions set forth in article 5, and consequently it is impossible to provide any information on the measures adopted in compliance with that paragraph.

58. Concerning article 7, paragraphs 2 and 3 of the Convention, articles 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the Constitution of Guatemala, i.e., those pertaining to due process, set forth the minimum procedural safeguards for the protection of the detainee. The same provisions are contained in the Code of Penal Procedure which refers, in each case, to the domestic jurisdiction and competence of Guatemalan law in criminal matters, in full compliance with individual human rights.

## Article 8

59. Since they refer to the provisions contained in article 4 and the first paragraph of article 5 of the Convention, paragraphs 1, 2, 3 and 4 of article 8 have not found any practical application in the State of Guatemala.

60. Notwithstanding, Guatemala, in conformity with its domestic law and with the extradition treaties concluded with other States, has extradited seven Guatemalans and one foreigner on the dates and for the offences listed below:

(a) Roel Adolfo Escobar Ortiz, murder, handed over on 17 February 1989;

(b) Rufino Arriaza Córdova, murder, handed over on 1 April 1992;

(c) Mynor or Maynor Sarceño (Sarceño García or Sarceño Escobar), drug trafficking, handed over on 13 December 1990;

(d) Arnoldo Vargas Estrada, drug trafficking, handed over on 19 May 1992;

(e) Víctor Manuel Escobar (or Escobar Torres), drug trafficking, handed over on 22 May 1992;

(f) Otto Evelia (or Otto Evelio) Quiroz Dávila, drug trafficking, handed over on 27 May 1992;

(g) Julio Roberto García Mazariegos (or Mazariegos García), kidnapping, attempted murder and illegal use of firearms, handed over on 5 June 1992. His case having been settled, he returned to the country in 1993 and is now residing in Guatemala where he is in business;

(h) Maurice Scott Germain (Frank Waters or Frank Scott Walker), drug trafficking, handed over on 7 January 1994.

61. Extradition requests received by Guatemala

The Government of Guatemala has received requests for extradition in respect of the following persons:

(a) Guatemalans

(i) Carlos Armando Juarez (Raul Duarte or Duarte Trigueros; Sergio Pulio Mejias or Mejia Moscoso). He is accused of murder and is wanted for arrest. The case is being dealt with by the first criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(ii) Carlos Nicolas Caal Jimenez. He is accused of murder and is wanted for arrest. The case is being dealt with by the second criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(iii) Hector Emilio Cabrera. He is accused of murder, assault and robbery and is wanted for arrest. The case is being dealt with by the third criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(iv) Alvaro Israel Alvarado. He is accused of murder, and is wanted for arrest. The case is being dealt with by the fourth criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(v) Giovanni de Jesus Gonzalez. He is accused of murder and is wanted for arrest. The case is being dealt with by the fifth criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(vi) Carlos Rene Ochoa Ruiz. He is accused of drug trafficking. He is free, pending the outcome of an application for amparo lodged with the Constitutional Court. Petitioner, United States of America;

(vii) Roberto Antonio Beltranena Bufalino. He is accused of drug trafficking. He is wanted for arrest. The case is being dealt with by the sixth criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(viii) Francisco Eugenio Feldmar Boppel. He is accused of drug trafficking. He is wanted for arrest. The case is being dealt with by the seventh criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(ix) Luis Renaldo Barrera. He is accused of drug trafficking. He is wanted for arrest. The case is being dealt with by the seventh criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America.

(b) Aliens

(i) Federico Alberto Escoto, a Nicaraguan citizen. He is accused of assault and is wanted for arrest. The case is being dealt with by the sixth criminal court of first instance, drug trafficking and environmental offences. Petitioner, United States of America;

(ii) Carolyn Holly Fried (Sarah Bernstein, Sarah Bernhardt or Sarah Matzar), a United States citizen. She is being detained in the Santa Teresa women's prison in district 18 of Guatemala City, on charges of drug trafficking. The application for extradition has been processed. Her extradition is pending. Petitioner, United States of America. She will be handed over to the Ministry of Foreign Affairs;

(iii) Amparo Jose Mercado Miranda and Fatima Del Socorro Aguilar Mejia, Nicaraguan citizens. They have been charged with abduction of a minor and forgery of official documents. They are wanted for arrest. The case is being dealt with by the fourth criminal court of first instance, drug trafficking and environmental offences. Petitioner, Nicaragua;

(iv) Mario Ruben Gonzalez (Mario Ruben Gonsales or Maria Ruben Gonsalves), a Uruguayan citizen. He is accused of assault and armed robbery and is wanted for arrest. The case is being dealt with by the sixth criminal court of first instance, drug trafficking and environmental offences. Petitioner, Canada;

(v) Alfredo Augusto Zanatti Tavolara and Jose Jaime Bedoya Garreta, Peruvian citizens. They are accused of fraud and offence against the State. They are wanted for arrest. The case is being dealt with by the fourth criminal court of first instance, drug trafficking and environmental offences. Petitioner, Peru.

62. Extradition requests made by Guatemala

Guatemala has requested foreign governments for the extradition of the following:

(a) Daniel Menendez Granillo, known to be living in El Salvador, who is accused of murder;

(b) Leonel Sigfrido Blanco Beteta, who was arrested on 28 June 1994 in Sinaloa, Mexico, for extradition to Guatemala, accused of fraud;

(c) Jorge Sergio Blanco Beteta, known to be living in Mexico, who is accused of misappropriation and unlawful withholding;

(d) Juan Carlos Simmons Garcia, a Guatemalan citizen, who is accused of murder. The case is being dealt with by the first court of first instance in Sololá. An application for his extradition was submitted to the United States of America. It was returned, with a request for further details, by the United States Department of Justice;

(e) Sergio Roberto Giron Sierra and Alberta Estela Mendez Contreras. Their case is being dealt with by the third criminal examining court of first instance. They are accused of peculation. An application for their extradition was submitted to the United States of America. It was returned, with a request for further details, by the United States Department of Justice;

(f) Amy Robin Weil (Amy Robin Weil Singer or Amy Robin Weil Singer de Habie), a United States citizen. An application for her extradition was submitted to the Government of the United States of America, where she is currently living; she is accused of a number of property offences.

63. The six cases listed above have been turned down by virtue of the provisions of the Additional Protocol to the Inter-American Convention on Letters Rogatory, signed on 8 May 1979 in Montevideo, Uruguay, which applies to Guatemala and the United States of America.

64. The case of Gustavo Adolfo Espina Salguero. In June 1993, at the request of the Office of the President of the Judiciary, and subsequent to the issue of a warrant for his arrest and trial by the fourth criminal examining court of first instance, a request was made for the arrest of the former

Vice-President of the Republic, Gustavo Adolfo Espina Saiguero for extradition on a number of counts. The application was turned down by the Government of Costa Rica which stated that he could not be extradited as Costa Rican legislation prohibits the extradition of political offenders, particularly when, as in his case, they have obtained asylum in Costa Rica.

65. The case of Francisco Rolando Perdomo Sandoval. In July 1993, after criminal proceedings had been initiated against him on various charges and at the request of the Office of the President of the Judiciary, an application was submitted to the Government of the Republic of Panama for the arrest, pending extradition, of the former Minister of the Interior, Francisco Rolando Perdomo Sandoval. However, the application was turned down because the fourth criminal examining court of first instance, which dealt with the case, had omitted to specify that a warrant had been issued for his arrest. The file was returned to the applicant court for amendment, but was not submitted again, possibly because when the Panamanian authorities turned down the application, they stated that their Constitution prohibited the extradition of a political offender.

66. The case of Jorge Antonio Serrano Elias. The file containing the charges and evidence against the former President of the Republic is currently with the Ministry of Foreign Affairs for transfer to the Guatemalan Embassy in Panama and submission, through the Panamanian Ministry of Foreign Affairs, to the Panamanian judicial authorities.

Extradition treaties signed and approved by Guatemala

67. For the purposes of this report it is worthwhile listing the extradition treaties to which Guatemala is currently a party:

(a) Guatemala-Belgium. Treaty on the Extradition of Criminals, signed in Guatemala on 20 November 1897. Approved by Legislative Decree No. 380, dated 13 April 1898. Ratified on 6 August 1898. Exchanged on 12 August 1898. Published in the Diario Oficial (Official Journal), vol. XXXVIII, no. 74, dated 20 August 1898;

(b) Guatemala-Belgium. Agreement Additional to the Extradition Treaty, signed in Guatemala on 26 April 1934. Approved by Legislative Decree No. 1999, dated 14 May 1934. Ratified on 25 May 1934. Exchanged on 13 May 1935. Published in the Diario Oficial, vol. XII, no. 97, dated 27 February 1935;

(c) Guatemala-Belgium. Protocol Additional to the Extradition Treaty. Signed in Guatemala on 21 October 1959. Approved by Legislative Decree No. 1935, dated 2 February 1960. Ratified on 19 February 1960. Pending exchange. Published in the Diario Oficial, vol. CLVIII, no. 66, dated 29 March 1960;

(d) Guatemala-El Salvador-Nicaragua-Costa Rica. Signed in Washington on 7 February 1923. Approved by Legislative Decree No. 1391, dated 14 May 1925. Ratified on 20 May 1925. The instrument of ratification was deposited on 19 June 1925. Published in the Diario Oficial, vol. CXI, no. 56, dated 3 July 1925. Concerns fugitives from justice;

(e) Guatemala-Argentina-Chile-Colombia-Dominican Republic-Ecuador-El Salvador-United States-Honduras-Mexico-Nicaragua and Panama. Treaty on Extradition, signed at the Seventh International Conference of American States, in Montevideo, on 26 December 1993. Approved by Legislative Decree No. 2145, dated 1 April 1936. Ratified on 12 May 1936. Instrument of ratification deposited on 17 July 1936. Published in the Diario Oficial, vol. XVI, no. 80, dated 6 June 1936;

(f) Guatemala-United States. Extradition Treaty signed in Washington on 27 February 1903. Approved by Legislative Decree No. 561, dated 28 April 1903. Ratified on 12 June 1903. Exchanged on 16 July 1903. Published in the Diario Oficial, vol. LIII, no. 18, dated 1 October 1903;

(g) Guatemala-United States. Agreement Additional to the Extradition Treaty. Signed in Guatemala on 20 February 1940. Approved by Legislative Decree No. 2414, dated 10 April 1940. Ratified on 20 June 1940. Exchanged on 6 February 1941. Published in the Diario Oficial, vol. XXX, no. 63, dated 6 January 1941;

(h) Guatemala-United Kingdom. Extradition Treaty, signed in Guatemala on 4 July 1885. Approved by Legislative Decree No. 132, dated 24 April 1886. Ratified on 6 September 1886. Published in the Diario Oficial, no. 110, dated 15 March 1886;

(i) Guatemala-United Kingdom. Exchange of Notes to Extend the Provisions of the Extradition Treaty to Certain Territories under British Mandate. (The Extradition Treaty to which the notes refer is dated 4 July 1885);

(j) Guatemala-United Kingdom. Protocol Additional to the Extradition Treaty. Signed in Guatemala on 30 May 1914. Approved by Government Order dated 13 June 1914. Published in the Diario Oficial, vol. LXXX, no. 44, dated 23 June 1914;

(k) Guatemala-Mexico. Treaty on the Extradition of Criminals, signed in Guatemala on 19 May 1894. Approved by Legislative Decree No. 298, dated 2 May 1895. Ratified on 2 September 1895. Exchanged on 2 September 1895. Published in the Diario Oficial, vol. XXIX, no. 100, dated 5 September 1895;

(l) Guatemala-Spain. Extradition Treaty. Signed in Guatemala on 7 November 1895. Approved by Legislative Decree No. 357, dated 19 April 1897. Ratified on 10 May 1897. Exchanged on 10 May 1897. Published in the Diario Oficial, vol. XXXV, no. 22, dated 10 June 1897;

(m) Guatemala-Spain. Protocol Additional to the Extradition Treaty. Signed in Guatemala on 23 February 1897. Approved by Legislative Decree No. 357, dated 19 April 1897. Ratified on 10 May 1897. Exchanged on 10 May 1897. Published in the Diario Oficial, vol. XXXV, no. 22, dated 10 June 1897.

68. The treaties listed above are currently in force for the contracting States.

## Article 9

69. With regard to article 9, paragraphs 1 and 2, Guatemala has entered into treaties and agreements on extradition (listed above) pursuant to which it is obliged, as a party, to provide mutual judicial assistance to the other contracting State in respect of any specific cases, such as those listed above.

## Article 10

70. As to article 10, paragraphs 1 and 2, Guatemala has a system for bringing respect for and compliance with human rights to the attention of the agencies concerned with law and order and national security. At the present time, the Coordinating Committee for Government Human Rights Policy (COPREDEH) is operating a system designed to acquaint State security agencies (civilian and military) with the objectives and scope of the Human Rights Verification Commission established under the Comprehensive Agreement concluded in Mexico City by the Government of Guatemala and the Guatemalan National Revolutionary United Front (URNG).

71. Similarly, the Ministry of the Interior publicizes the code of conduct for law enforcement officials throughout the public sector.

## Article 11

72. Under article 9 of the Constitution of the Republic of Guatemala, the judicial authorities are alone competent to interrogate detainees or prisoners. This must be done within a period of not more than 24 hours.

73. Extrajudicial interrogation has no probative value, for which reason there is no point in engaging in this practice, which is illegal. Consequently, article 82 of the Amparo, Habeas Corpus and Constitutionality Act stipulates that anyone who is illegally detained, imprisoned or prevented in any other manner from enjoying his individual freedom, or threatened with the loss of that freedom, or suffering harassment, even if he is imprisoned or detained in accordance with the law, has the right to apply for a writ of habeas corpus from the courts of justice, to secure the restoration or safeguarding of his freedom or cessation of the harassment or termination of the coercion to which he has been subjected.

74. For the purposes of compliance with these provisions, the Judiciary has a General Supervision of Courts Office to monitor the administration of justice.

75. With reference to supervision of members of the police, the Professional Responsibility Office is responsible for monitoring the behaviour of police officers and, if they have committed offences, bringing them to court forthwith.

76. Similarly, with regard to the prison system, under Government Order No. 607-8, article 14, pertaining to the Regulations of the Prisons Department, the responsibilities of the Inspector-General are:

(a) To make periodic inspections of all detention centres in Guatemala and verify that they are functioning properly, in accordance with the law and with the regulations;

(b) To instruct heads of detention centres about their obligations, duties and functions, so as to achieve the highest efficiency at such centres, and to report to the Director-General on his activities;

(c) To have under his jurisdiction the Internal Investigations Department, which will conduct any relevant enquiries into anomalies or complaints about the general functioning of detention centres and their staff; and

(d) To supervise, directly, administrative procedures and activities, the provision of services, the treatment of persons in custody, and their living conditions, and to watch over their safety.

77. In addition, the Regulations of Detention Centres in the Republic of Guatemala, Government Order No. 975-84, state in article 9 that the governor is the head of the centre's personnel and his duties include maintaining direct contact with inmates in order to acquaint himself with their personality, concerns and needs, and taking measures to improve their situation, provided those measures are consistent with the regulations. Again, article 1 lays down that pre-trial detention centres are establishments intended for the custody of detainees and of persons facing charges in the courts of the Republic. Consequently, article 35 of the Regulations establishes that inmates are entitled to be heard by the centre's officials; to transmit peaceful and respectful complaints and petitions to outside authorities and/or to explain them in person to officials who are required as part of their duties to inspect such establishments.

78. The following disciplinary measures may be taken against inmates who act in breach of the laws and regulations at criminal detention centres:

(a) Verbal warning;

(b) Written warning;

(c) Temporary exclusion from recreational activities;

(d) Change of work;

(e) Suspension of special privileges;

(f) Assignment to unpaid work or service;

(g) Transfer to another section of the establishment;

(h) Suspension of parcel privileges;

(i) Suspension of family visits;

(j) Suspension of special visits;

(k) Isolation for a period of at least 24 hours and at most 48 hours, to be determined by the prison authorities, during which the inmate will be observed by the centre's physician.

79. In Guatemala there are 14 criminal detention centres operated by the Prisons Department, in the following places:

| | |
|---|---|
| (a) Guatemala City: | Men's Pre-trial Centre, zone 18;<br>Santa Teresa Women's Prison, zone 18; |
| (b) Fraijanes Municipality: | Women's Guidance Centre (COF), Pavón Model Rehabilitation Farm and Constitutional Pre-trial Detention Centre; |
| (c) Depto. Escuintla: | "Canada" Model Rehabilitation Farm; |
| (d) Depto. Mazatenango: | Departmental prison; |
| (e) Depto. Quetzaltenango: | Cantel Model Rehabilitation Farm; |
| (f) Depto. Chimaltenango: | Departmental prison; |
| (g) Depto. Antigua: | Departmental prison; |
| (h) Depto. El Progreso: | Departmental prison; |
| (i) Depto. Baja Verapaz: | Departmental prison; |
| (j) Depto. de Izabal: | Departmental prison; |
| (k) Depto. El Peten: | Departmental prison. |

80. The number of inmates in each of the various criminal detention centres for men and women in 1993 was as follows:

(a) Rehabilitation farms: 500 to 600 inmates;

(b) Pre-trial Centres: 900 to 1,000 inmates;

(c) Departmental prisons: 100 to 200 convicted persons;

(d) Women's prisons: 100 to 200 inmates.

81. Out of this total, 47 are foreign men serving a sentence. They come from:

| | |
|---|---|
| El Salvador | 23 |
| Honduras | 12 |
| Colombia | 4 |
| Mexico | 2 |
| United States | 2 |
| Nicaragua | 1 |
| Canada | 1 |
| Cuba | 1 |
| China | 1 |
| TOTAL | 47 |

82. There are 90 foreigners, including 19 women, now in custody whose cases are being dealt with by the courts. Their countries of origin are as follows:

| | |
|---|---|
| El Salvador | 39 |
| Colombia | 16 |
| Honduras | 13 |
| Nicaragua | 12 |
| Mexico | 4 |
| United States | 4 |
| Panama | 2 |
| TOTAL | 90 |

## Article 12

83. In this connection, article 88 of the Amparo, Habeas Corpus and Constitutionality Act provides that immediately upon receipt of an application or of information concerning an act giving rise to habeas corpus, the court, on behalf of the Republic of Guatemala, shall issue an order for the personal appearance of the person concerned, specifying the time for such appearance and ordering the authority, official, employee or other person alleged to be responsible to produce the aggrieved party, as well as the original or a copy of the detention proceedings or any other records and to furnish detailed information concerning the grounds for the detention, including at least the following particulars:

(a) The identity of whoever ordered the detention or coercion or carried it out, together with the date on which it took place and the circumstances;

(b) Whether the detained person was in the immediate custody of the informant or whether he was transferred to another person, in which case the name of this person must be given, as well as the place and time of the transfer and the reasons therefor; and

(c) The warrant constituting the grounds for detention.

In the light of this information, the court proceeds to determine responsibility and decides on any applicable penalty.

## Article 13

84. Article 2 of Congressional Decree No. 40-94 specifies the functions of the Government Procurator's Office as follows, without prejudice to any functions which may be assigned to it by other legislation:

(a) To investigate publicly actionable offences and to arrange for criminal prosecution of the offenders in the courts, under the powers bestowed upon it by the Constitution, the laws of the Republic and international treaties and conventions;

(b) To bring civil proceedings in the cases provided for by law and to advise persons wishing to lodge a civil complaint in the case of privately actionable offences, in accordance with the provisions of the Code of Penal Procedure;

(c) To direct the police and other security agencies of the State in investigating delictual acts;

(d) To maintain the rule of law and respect for human rights by taking the necessary measures before the courts.

85. Among the procedural safeguards established in the Code of Penal Procedure, article 5 of the Code provides that the purpose of a criminal trial is to investigate any act alleged to constitute a crime or misdemeanour, as well as the circumstances in which it may have been committed; to determine whether the accused may have participated in the act; to deliver the appropriate judgement and to ensure its execution.

86. Article 20 of the Code provides that the defence of the person and of his rights in criminal proceedings shall be inviolable. No one may be punished without having been charged, heard and convicted in a lawful trial by a competent tribunal in accordance with previously established procedures in which the formalities and safeguards provided by the law have been observed.

87. Article 12 of the Constitution stipulates that the defence of one's person and one's rights is inviolable. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal. No one may be tried by special or secret tribunals or by procedures not lawfully established in advance.

88. It should be mentioned that, pursuant to these provisions, the abduction of the Ursuline nun Diana Marck Ortiz was the subject of a complaint made to the police and judicial authorities of the town of Antigua Guatemala on 2 November 1989. As indicated in the corresponding file No. 5031 of the same date, preliminary action was taken by the magistrate's court of

Antigua Guatemala. The proceedings currently depend on the effects of a decision and on whether probative evidence against the alleged perpetrators of the offence is produced.

## Article 14

89. In this connection, article 155 of the Guatemalan Constitution provides that when, in the performance of his duties, a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused. Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out. In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment. Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

90. Attention is drawn also to articles 124 to 126 of the Code of Penal Procedure, which deal with private reparation and the content and limits thereof and the question of withdrawal of a civil claim by the claimant at different stages of the procedure.

91. The procedure laid down for civil actions deals with the submission of the claim for damage or injury. The claim, as submitted by the claimant, is dealt with through an award which may condemn the defendant to payment of compensation for physical, mental or financial injury, as the case may be. It is therefore not possible to define the limits of the compensation, as this will depend on the amount of the claim made by the claimant on initiating his civil action.

## Article 15

92. As mentioned earlier, article 9 of the Guatemalan Constitution provides that only the judicial authorities are competent to interrogate persons who have been arrested or imprisoned. The interrogation must take place within 24 hours. Extrajudicial interrogation has no probative value.

93. Article 116 of the Code of Penal Procedure, which deals with the question of joint actions, provides that in the case of publicly actionable offences an injured party having civil capacity, or his representative or guardian where he lacks capacity, may institute criminal proceedings or join an action already initiated by the Government Procurator's Office, subject to such limitations as the Code provides. The same right may be exercised by any citizen or association of citizens against public officials or employees who have directly viclated human rights in the exercise of their functions or on the occasion thereof, as well as in the case of offences committed by public officials who abuse their office. Organs of the State may bring an action only through the Government Procurator's Office. Autonomous bodies with juridical personality are excepted from this rule.

94. In Guatemala, therefore, it is not the practice nor is it lawful to interrogate arrested or imprisoned persons while subjecting them to torture or other cruel, inhuman or degrading treatment or punishment, since statements obtained in this manner would have no procedural validity and, in other words, would not constitute probatory evidence.

## Article 16

95. With reference to this article, Guatemala strictly prohibits throughout its territory any act which constitutes torture, or other cruel, inhuman or degrading treatment or punishment. In the event of such an act being committed, however, the internal law lays down legal procedures for trying those responsible.

List of annexes*

1. POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA AND AMENDMENTS
2. CIVIL CODE
3. PENAL CODE
4. CODE OF PENAL PROCEDURE
5. MINORS CODE
6. NATIONALITY ACT
7. AMPARO, HABEAS CORPUS AND CONSTITUTIONALITY ACT
8. MIGRATION ACT
9. CONGRESSIONAL COMMISSION ON HUMAN RIGHTS AND PROCURATOR FOR HUMAN RIGHTS ACT
10. OFFICIAL DECLARATION OF HUMAN RIGHTS, 4 OCTOBER 1993
11. COMPREHENSIVE DECISION ON HUMAN RIGHTS, 29 MARCH 1994
12. UNITED NATIONS VERIFICATION MACHINERY, 29 MARCH 1994
13. GOVERNMENT DECREE ESTABLISHING COPREDEH AND AMENDMENTS THERETO
14. GOVERNMENT PROCURATOR'S OFFICE (ORGANIZATION) ACT
15. DECISION No. 8-94 OF THE SUPREME COURT
16. DECISION No. 9-94 OF THE SUPREME COURT
17. DECISION No. 11-94 OF THE SUPREME COURT
18. DECISION No. 12-94 OF THE SUPREME COURT
19. DECISION No. 13-94 OF THE SUPREME COURT
20. GOVERNMENT ORDER No. 975-84
21. GOVERNMENT ORDER No. 607-88

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* The annexes may be consulted in the files of the Centre for Human Rights once they have been received from the Government of Guatemala.